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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/759,061	01/20/2004	Maurice Blanchette	16231-1US SC/sm	6678
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OGILVY RENAULT LLP 1981 MCGILL COLLEGE AVENUE SUITE 1600 MONTREAL, QC H3A2Y3 CANADA				
EXAMINER GABLER, PHILIP FRANCIS				
ART UNIT		PAPER NUMBER		
3637				

DATE MAILED: 12/29/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	<b>Application No.</b>	<b>Applicant(s)</b>	
	10/759,061	BLANCHETTE, MAURICE	
	<b>Examiner</b>	<b>Art Unit</b>	
	Philip Gabler	3637	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

#### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) ☒ Responsive to communication(s) filed on 20 January 2004.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) ☒ Claim(s) 1-16 is/are pending in the application.
- 4a) Of the above claim(s) 14-16 is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-13 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 20 January 2004 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All    b) ☐ Some \*    c) ☐ None of:
1. ☒ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)  | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                                   | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____  |

## **DETAILED ACTION**

### ***Election/Restrictions***

1. Restriction to one of the following inventions is required under 35 U.S.C. 121:
  - I. Claims 1-13, drawn to an industrial platform, classified in class 108, subclass 27.
  - II. Claims 14-15, drawn to a blank, classified in class 428, subclass 577.
  - III. Claim 16, drawn to a supporting column, classified in class 52, subclass 651.07.

The inventions are distinct, each from the other because of the following reasons:

2. Inventions I and II are unrelated. Inventions are unrelated if it can be shown that they are not disclosed as capable of use together and they have different modes of operation, different functions, or different effects (MPEP § 806.04, MPEP § 808.01). In the instant case the different inventions are distinct because the blank, as claimed, cannot be used with and is entirely separate from the industrial platform.
3. Inventions I and III are related as combination and subcombination. Inventions in this relationship are distinct if it can be shown that (1) the combination as claimed does not require the particulars of the subcombination as claimed for patentability, and (2) that the subcombination has utility by itself or in other combinations (MPEP § 806.05(c)). In the instant case, the combination as claimed does not require the particulars of the subcombination as claimed because the platform could be supported

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on any of a variety of supports. The subcombination has separate utility such as being used as a signpost.

4. Inventions II and III are unrelated. Inventions are unrelated if it can be shown that they are not disclosed as capable of use together and they have different modes of operation, different functions, or different effects (MPEP § 806.04, MPEP § 808.01). In the instant case the different inventions because the blank, as claimed, cannot be used with and is entirely separate from the support column.

5. Because these inventions are distinct for the reasons given above and have acquired a separate status in the art as shown by their different classification, restriction for examination purposes as indicated is proper.

6. From a telephone call to Mr. Robert Mitchell on 7 December 2005 a provisional election was made without traverse to prosecute the invention of group I, claims 1-13. Affirmation of this election must be made by applicant in replying to this Office action. Claims 14-16 are withdrawn from further consideration by the examiner, 37 CFR 1.142(b), as being drawn to a non-elected invention.

### ***Specification***

7. The disclosure is objected to because of the following informalities: element numbering appears to be incorrect in at least two cases. On line 4 of paragraph 24, the columns have been numbered 16 rather than 22, and on line 3 of paragraph 28, the hand rails have been numbered 22 rather than 38.

Appropriate correction is required.

***Claim Rejections - 35 USC § 112***

8. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

9. Claim 8 is rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. The claim recites the limitation "a ... strip having first and second longitudinally extending folds oriented at about 90 degrees with respect to each other." If the two folds extend longitudinally, it is implied that they are parallel and thus cannot be oriented at about 90 degrees with respect to each other. Accordingly, claim 8 is deemed indefinite.

10. Claim 8 is further viewed as indefinite because of the term "first and second longitudinally extending portions" mentioned on lines 5-6 of the claim. It is unclear if this term refers to the "terminal longitudinal edge portion" associated with the first and second folds described earlier in the claim or is a separate portion. Accordingly, claim 8 is deemed indefinite.

***Claim Rejections - 35 USC § 102***

11. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

12. Claims 1-9 are rejected under 35 U.S.C. 102(b) as being anticipated by Mattick (US Patent Number 3420484). Mattick (Figures 1-3 and 5) discloses a platform assembly (T, Mattick's Figure 1) comprising a weldless frame (components S and L) including at least three profiles (S) bolted together so as to define a support plane, a support column (L) at each corner of said frame, said support column being bolted to said weldless frame. Note that the claim recites a product by process limitation ("cold-formed"). The product itself does not depend on the process of making it and this limitation would not be expected to impart distinctive structural characteristics to the device.

13. Regarding claim 2, Mattick further discloses profiles, which are beam members (S) of a predetermined cross-section. Note that this claim also recites a product by process limitation ("cut and folded"). The product itself does not depend on the process of making it and this limitation would not be expected to impart distinctive structural characteristics to the device. Therefore, Mattick's device is readable on applicant's device. In addition, it is inherent from Mattick's Figures 1-2 that his beam members were cut and folded into a predetermined cross section.

14. Regarding claim 3, Mattick further discloses profiles (S) that are C-shaped in cross section (see Figure 2) and wherein an open side of said profiles faces inwardly of said weldless frame.

15. Regarding claim 4, Mattick further discloses profiles (S) provided with connecting tabs (16) at opposed longitudinal ends thereof, each of said connecting tabs defining a

number of holes (14) and (17) for receiving fasteners in order to achieve mechanical connections between the profiles.

16. Regarding claim 5, Mattick further discloses connecting tabs that are folded at 90 degrees (indicated by A in Exhibit 1).

17. Regarding claim 6, Mattick further discloses support columns (L) with two open sides (opposite of sides 3).

18. Regarding claim 7, Mattick further discloses that the open sides face inwardly of said weldless frame (see Figure 2).

19. Regarding claim 8, as best understood, Mattick further discloses support columns with first and second longitudinally extending folds (B and D), said first and second folds having terminal longitudinal edge portion merging into flanges (6) oriented at about 90 degrees to respective extending portions.

20. Regarding claim 9, Mattick further discloses a corner brace (G) at each corner of said frame, each brace being bolted to adjacent profiles extending from the corner.

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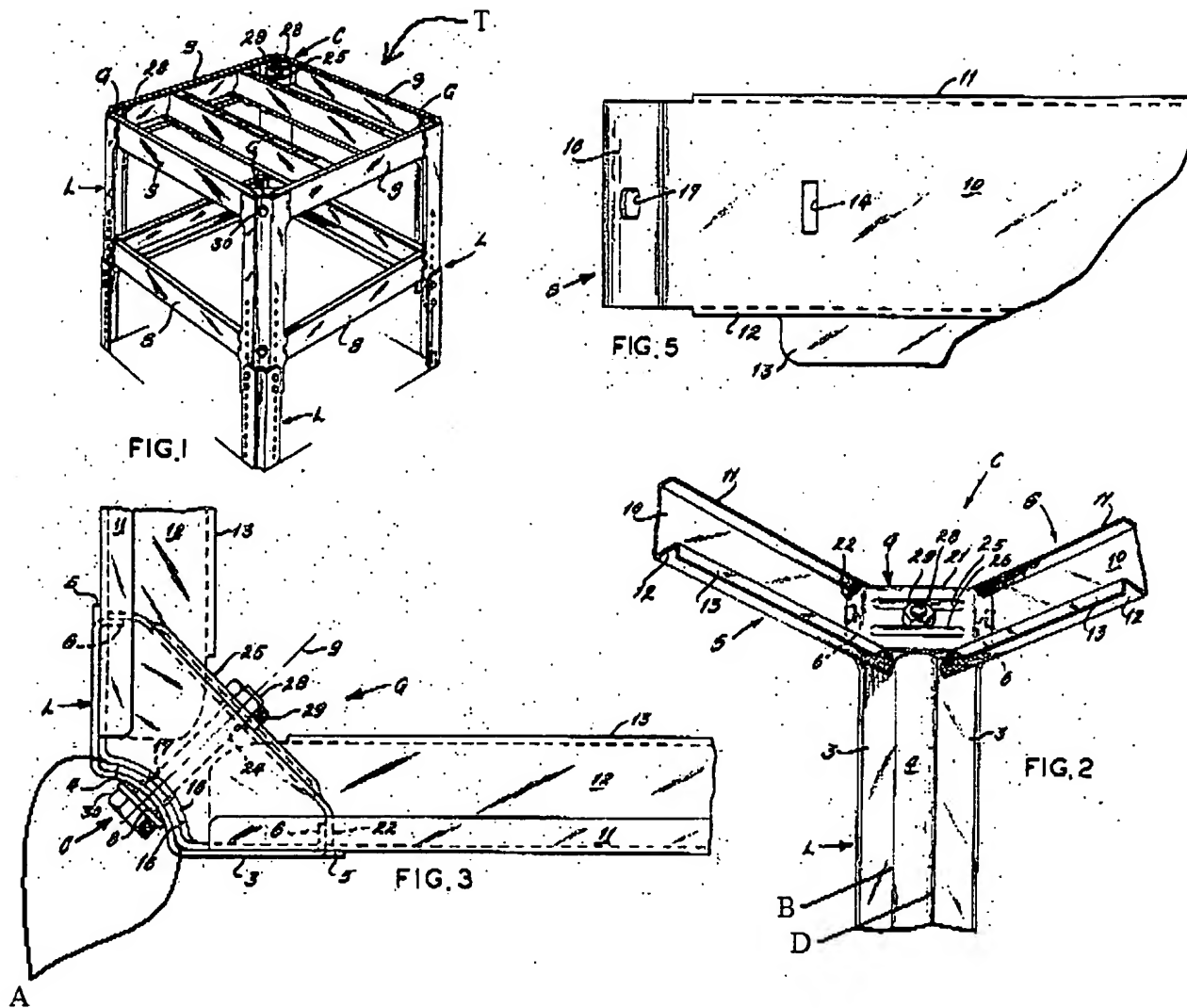


Exhibit 1: Mattick '484 Figures 1-3 and 5

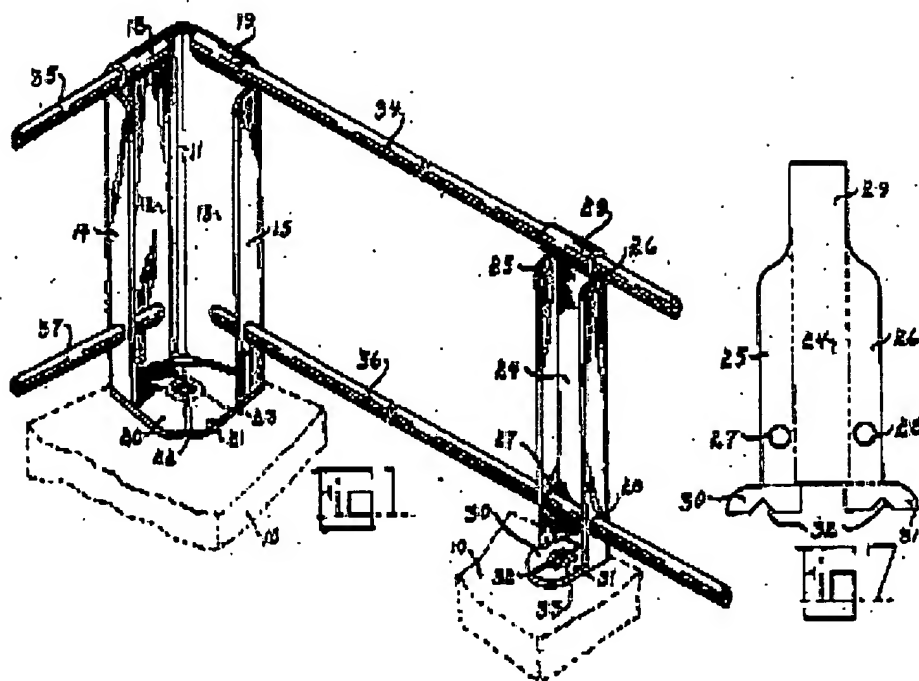


***Claim Rejections - 35 USC § 103***

21. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

22. Claim 10 is rejected under 35 U.S.C. 103(a) as being unpatentable over Mattick in view of Shelton (US Patent Number 2238348). Mattick discloses a platform assembly as recited in claim 1 but does not disclose a guard rail projecting upwardly from the perimeter. Shelton discloses (Figures 1 and 7) a guard rail projecting upwardly from a portion of a surface (10), said guard rail including a number of guard rail posts (24), said guard rail post being made from C-shaped profiles. Note that this claim recites a product by process limitation ("cut and folded"). The product itself does not depend on the process of making it and this limitation would not be expected to impart distinctive structural characteristics to the device. Accordingly, it would have been obvious to one of ordinary skill in the art at the time the invention was made to modify Mattick's platform to include a guard rail assembly as taught by Shelton because this would keep objects from falling from the platform (see Shelton column 1 lines 50-51).

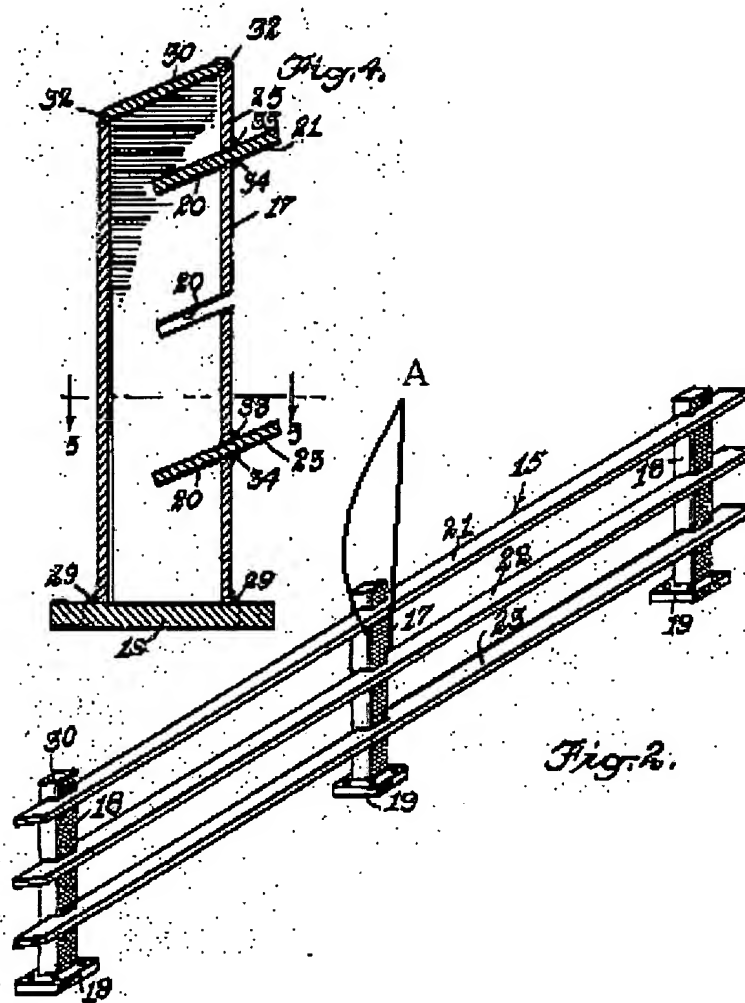


Shelton '348 Figures 1 and 7

23. Claims 11-13 are rejected under 35 U.S.C. 103(a) as being unpatentable over Mattick in view of Shelton and further in view of Diamond (US Patent Number 2733897). Mattick, when modified by Shelton as described above, discloses a platform as recited in claim 10 but does not disclose a hole extending through fold lines defining a receiving cavity. Diamond (Figures 2 and 4) discloses a guard rail post having two parallel longitudinal folds (viewed as A in Exhibit 2) and wherein an oblong hole (20) extends transversely through said folds to define a rail receiving cavity on a back side of the post. Accordingly, it would have been obvious to one of ordinary skill in the art at the time the invention was made to modify Mattick's platform, previously modified by

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Shelton, to include an oblong hole through the post (by simply connecting Shelton's holes 27 and 28) to receive a rail as taught by Diamond because this arrangement would provide a simpler method of mounting rails to the guard rail post.



Diamond '897 Figures 2 and 4

24. Regarding claim 12, Shelton further discloses a solid tubular rail (36) mounted in his receiving cavity. Note that this claim recites a product by process limitation ("welded"). The product itself does not depend on the process of making it and this

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limitation would not be expected to impart distinctive structural characteristics to the device.

25. Regarding claim 13, Shelton further discloses a depression (29) defined at the top end of the guard rail post extending across said folds so as to define a seat for receiving a hand rail.

### ***Conclusion***

26. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. The Bowman (US Patent Number 3754728) and Rooklyn (US Patent Number 4093167) references are cited for disclosing various platform frame assemblies. The Venegas, Jr. reference (US Patent Number 5312089) is cited for disclosing a tubular guard rail assembly.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Philip Gabler whose telephone number is (571) 272-6038. The examiner can normally be reached on Monday through Friday, 8:30 AM to 5:00 PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Lanna Mai can be reached on (571) 272-6867. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

PFG *16*  
12/21/2005

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